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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,532	12/05/2003	Alexander A. Sher	88265-7417	7330
28765	7590	11/25/2005		
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			EXAMINER KAUFMAN, JOSEPH A	
			ART UNIT 3754	PAPER NUMBER

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,532

Applicant(s)

SHER ET AL.

Examiner

Joseph A. Kaufman

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/5/2005</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

1. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 32, lines 2 and 3, “preferably” and “most preferably” render the claim indefinite as it is unclear what range is actually required by the claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-11, 17, 21, 24-28 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Scalera.

Scalera shows a fluid (water) source discussed in column 2, lines 53-55; nozzle 42; food (beverage concentrate) component sources connected to lines 28; nozzles 24; delivery device 32; the components mix by collision during free fall as noted in Figure 3, the intersection inherently slowing the flow after the collision; dispensing bay seen in Figure 1; container 58; ejection orifices seen in Figure 2 and 3; pumps 32; inherent thermal exchange unit as the ice would melt otherwise; and the method clearly follows from the above discussion and the disclosure of Scalera.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 12-16 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scalera.

Scalera has been discussed above, but lacks the particular angles, flow rates, viscosities, nozzle diameters and distance from nozzles to the intersection point. It would have been obvious to find all of these measurements by routine experimentation to optimize the efficiency and mixing of the device. Note, column 3, lines 3-7, discusses the relationship between nozzle diameter and viscosity.

7. Claims 18-20, 22, 23, and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scalera in view of Rudick.

Art Unit: 3754

Scalera has been discussed above, but lacks the peristaltic pump and the controller for sequentially or simultaneously dispensing the components. Rudick shows a peristaltic pump PW and controller SN. It would have been obvious to one of ordinary skill in the art to provide the specific pump and controller as taught by Rudick on the device of Scalera they are excellent for dosing specific amounts of material into a mixture. Further, Scalera discusses in column 2, lines 44-48 that the pumps can be actuated in "a manner known in the art". Using either a simultaneous or sequential dosing are both known and either would provide a benefit dependent on the desired mixture of the device (sequential would permit for a better foam head while simultaneous would provide for a more even and uniform mixture).

Conclusion


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bauerlein et al., Schroeder et al., Whigham et al., and Cutting et al. show other free fall type mixing nozzles; and Wantanabe et al. shows another peristaltic pump.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph A. Kaufman whose telephone number is (571) 272-4928. The examiner can normally be reached on Monday-Thursday, 5:30AM-2PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joseph A. Kaufman
Primary Examiner
Art Unit 3754
11/21/05

jak
November 21, 2005